

District Judge James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JULIO CURY and TAKAO YAMADA,

Plaintiffs,

v.

DEPARTMENT OF STATE, and
DEPARTMENT OF HOMELAND
SECURITY,

Defendants.

Case No. 2:23-cv-00499-JLR

SECOND SUPPLEMENTAL
JOINT STATUS REPORT

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Pursuant to the Court's Order (Dkt. 10), the parties submit this Joint Status Report.

Case Status:

Plaintiffs' Position: Defendants claim to have completed their processing of Plaintiffs' FOIA requests. The next step is for Defendants to file a motion for summary judgment demonstrating that there is no genuine issue of material fact regarding the question of whether they have properly processed the requests under FOIA. The remainder of Defendants' Position as stated below is irrelevant. Plaintiffs have done everything they are required to do.

1 Defendants' Position: The federal agencies have produced all responsive material that it
2 may lawfully produce subject to appropriate withholdings to Plaintiffs. In particular,
3 Department of Homeland Security ("DHS") and United States Citizenship and Immigration
4 Services ("USCIS") did not locate any responsive documents. Plaintiffs were informed of this
5 in October 2023. United States Customs and Border Protection ("CBP") located and produced
6 42 pages of documents in May 2023 (37 were released in part or in full, and 5 were released in
7 their entirety). Department of State ("State") located and produced three responsive documents
8 in October 2023 (two in full and one in part) after the commencement of this litigation. State's
9 Consular Affairs Bureau produced documents before Plaintiffs commenced this litigation.

10 Since October 2023, undersigned counsel for Defendants sent numerous email
11 communications to Plaintiffs confirming that agencies had either completed their productions or
12 not located documents and further enquiring whether Plaintiffs had any concerns with any of the
13 productions or the withholdings. None of these emails were answered. Not until January 23,
14 2024, did Plaintiffs' counsel respond. That was only to say that State's withholding under (b)(3)
15 was inappropriate and demand that "everything will need to be briefed." Plaintiffs later
16 provided a high-level list of issues that expressed general concern with the adequacy of each
17 agency's search and withholdings. Other than the specific State withholding from prior to the
18 litigation, Plaintiffs have not provided any specificity for its concerns or the basis underlying its
19 concerns.

20 Nevertheless, the government remains open to trying to work through any issues brought
21 by Plaintiffs that are well-founded and explained. Currently, Plaintiffs' position is just that all
22 issues will be litigated. If Plaintiffs provided some detail or specific reasoning as to why it does
23 not think the searches were adequate or why withholdings were improper, then Defendants will
24 address those specifically to see if any accommodation can be reached.

1 **Proposed Schedule:**

2 Plaintiffs' Position: It is well-established that government agencies bear the burden of
3 proof in FOIA cases and that they must seek summary judgment regarding their processing of
4 the requests in question. Defendants' proposed briefing schedule inverts this rule and seeks to
5 require Plaintiffs, who know virtually nothing about Defendants' processing of the FOIA
6 requests in question, to first prove that the agencies did *not* properly process the requests in
7 question. It is axiomatic that the party which does not bear the burden of proof cannot be
8 required to seek summary judgment. *See, e.g., DOJ v. Reporters Comm. for Freedom of Press*,
9 489 U.S. 749, 755 (1989) ("Unlike the review of other agency action that must be upheld if
10 supported by substantial evidence and not arbitrary or capricious, the FOIA expressly places the
11 burden 'on the agency to sustain its action' and directs the district courts to 'determine the
12 matter de novo.'"); *Wiener v. FBI*, 943 F.2d 972, 977-78 (9th Cir. 1991) (explaining evidence
13 agency is required to proffer because "[t]he party requesting disclosure must rely on his
14 adversary's representations"). Accordingly, Plaintiffs request that the Court issue the briefing
15 schedule presented in Defendants' Position below, except reversing the parties, so that
16 Defendants file their motion for summary judgment on April 26, 2024, Plaintiffs file their
17 opposition and any cross-motion on May 17, 2024, and so on.

18 By the same token, Plaintiffs reject the suggestion that they are required to provide any
19 specific objections regarding a process about which they have limited to no knowledge. Should
20 Defendants provide more information—for instance, in the form of draft declarations or draft
21 *Vaughn* indexes—between now and April, Plaintiffs are willing to engage in a reasonable
22 discussion to limit the issues in controversy. However, Plaintiffs will not attempt to guess at the
23 infirmities in Defendants' processing of their FOIA requests and exercise their right as the
24 parties who do not bear the burden of proof to require the Defendants to demonstrate through

1 admissible evidence that they have properly processed the FOIA requests in question according
2 to the terms of the statute and relevant case law.

3 Defendants' Position: Defendants believe that the parties should continue to work in
4 good faith to narrow or eliminate all issues. First, however, Plaintiffs must provide some
5 specific basis for its concerns that Defendants can address. If the Court orders this, then
6 Defendants propose the parties submit another Joint Status Report by March 29, 2024.

7 If briefing is necessary, the government proposes that Plaintiffs file an opening motion
8 for summary judgment on or before April 26, 2024. This will assist Defendants in addressing
9 the precise issues and making the briefing more concise and narrowed for the Court.
10 Defendants will file an opposition and cross-motion for summary judgment, if necessary, by
11 May 17, 2024. Defendants intend to demonstrate the adequacy of their searches and
12 withholdings through declarations, but those issues can be better presented after Defendants
13 understand Plaintiffs' concerns. Plaintiffs may file their reply and opposition by May 24, 2024,
14 and Defendants their reply by May 31, 2024.

15 Dated this 26th day of January 2024.

16 Respectfully submitted,

17 s/ Kel McClanahan

18 KEL MCCLANAHAN, WSBA #60671

19 National Security Counselors

20 4702 Levada Terrace

21 Rockville, MD 20853

22 Phone: 301-728-5908

23 Fax: 240-681-2189

24 Email: kel@nationalsecuritylaw.org

Attorney for Plaintiffs

TESSA M. GORMAN
United States Attorney

s/ Nicholas Bohl

NICKOLAS BOHL WSBA #48978

Assistant United States Attorney

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

Phone: 206-553-7970

Fax: 206-553-4067

Email: nickolas.bohl@usdoj.gov

Attorney for Defendants